IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

Thursday, the Seventh day of October Two Thousand and Four

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

WRIT PETITION NO : 8415 of 1995

Between:

1 Pentakota Kondraju S/o.Appanna, Agriculture,
R/oSrirangapatnam, Korukonda Mandal
East Godavari District.
2 Thanakala Appalaraju S/o.Venkataraju, 45 years,
Srirangapatnam, Korukonda Mandal,
East Godavari District.

..... PETITIONERS

AND

1 The District Collector,
East Godavari District at Kakinada
2 Special Agent to Government Integrated Tribal Development,
Rampachodavaram, East Godavari District.
3 Thota Rajanna Dora, S/o.Bullidora
Jagametlapalem (V) Rampachodavaram Mandal,
East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or any appropriate writ more particularly in nature of writ of mandamus declaring the order in appeal No.31/91, Dt.25/3/1995 on the file of the 1st respondent as illegal, null and void and without jurisdiction and for a consequential order directing the respondents 1 and 2 to drop all further proceedings in this regard.

Counsel for the Petitioners: MR.CH.DHANAMJAYA

Counsel for the Respondents: GP FOR REVENUE

The Court made the following:

ORDER:

Petitioners filed this writ petition seeking a writ of mandamus to declare the order in Appeal No.31/91, dated 25.03.1995 on the file of 1st respondent as illegal and consequently direct the respondents 1 and 2 to drop all further proceedings in that regard.

The case of the petitioners, in brief, is that they are the absolute owners of the land admeasuring Ac.10.00 cts in Sy.No.70/2 and 70/3 of Jagametlapalem village and the first petitioner and his father purchased the same on 30-10-1959 by way of a sale deed. The second respondent herein accorded permission to sell the land as per his order in C.M.P.No.1/59, dated 30-07-1959. The father of the third respondent filed L.T.R.P.No.354/78 under Section 3 of the A.P. Scheduled Areas Land Transfer Regulation 1 of 1959, as amended by Act 1 of 1970. Thereupon the Special Deputy Collector, Tribal Welfare has conducted a full-fledged enquiry and held that the transactions are not hit by Section 3 of the Regulation 1 of 1959 and transfers are valid under law. Pursuant to the Transfer, the Settlement Officer, Rajahmundry granted Ryotwari patta, in favour of first petitioner and his father and the decision of the Special Deputy Collector in L.T.R.P. 354/78 has become final and no appeal has been filed either by the aggrieved party or by the Government. Thereafter, the third respondent herein filed L.T.R.P.No. 238/88 before the 2nd respondent for restoration of possession under Section 3 of the L.T.R. Act 1/70, wherein the 2nd respondent herein allowed the application and directed the Mandal Revenue Officer to put the third respondent in possession of the schedule land by evicting the petitioners and on that the petitioners filed C.M.A.No.16/89 on the file of 1st respondent herein. After considering the entire evidence on record, the 1st respondent allowed the appeal by order dated 19.7.1990 holding that when once Ryotwari patta was granted under Regulation 2/69 and 2/70, Sec.3 of Regulation 1/59 does not make the pattas already issued inoperative or void and thereby the possession of the petitioners over the schedule lands became lawful. The Project Officer, I.T.D.A., again initiated the present impugned proceedings i.e., Appeal No.31/91 before the 1st respondent herein on behalf of the 3rd respondent alleging that the transfer of land by a Tribal to non-Tribal in schedule area after 14.8.1970 without obtaining prior consent from the Agent to

the Government is null and void and the Settlement Officer, Rajahmundry erred in granting patta to them without proper enquiry. Petitioners further contended that the third respondent did not choose to file any appeal against the granting of pattas and allowed the order to become final. Against the decision of the Director of Settlement, further appeal shall lie to the Board of Revenue within 60 days from the date of communication of the order which will become final and the third respondent has not preferred any appeal as envisaged by Statute under Section 4 and under Section 9 of the A.P. Muttas (Abolition) and Conversion into Ryotwari Regulation, 1969.

The petitioners further contended that they purchased the schedule land under registered sale deeds for a valuable consideration after obtaining permission from the 2nd respondent and after due enquiry. The 1st respondent, without considering the order in C.M.A.No.16/89, which has become final, is trying to dispossess them by using force. Hence the present writ petition.

Counter affidavit has been filed by the respondents contending that the Settlement Officer, Rajahmundry granted Ryotwari patta to Sri Pentakota Kondaraju, S/o Appanna and Sri Tanakala Venkataraju, S/o Appanna, Srirangapatnam village of Korukonda Mandal in June, 1974 under Section 8 of the A.P. Regulation 2/69 and case file No.2806, dated 30.6.1974 in respect of land in S.No.70/2 measuring Hec. 4.45 of Jagamatlapalem village of Rampachodavaram Mandal. It is further contended that Tota Rajanna Dora who is a tribal, and whose ancestors were in possession of the Schedule land, filed a petition before the Special Deputy Collector (T.W) Rampachaodavaram under the provisions of A.P (S.A) Land Transfer Regulation seeking eviction of the pattadars. Aggrieved by the orders in L.T.R.P.No.238/88, dated 2.3.1989, the non-tribal pattadars filed appeal before the Agent to Government, Kakinada in C.M.A.No.16/89. After due enquiry, the Agent to Government, Kakinada passed orders that once ryotwari patta was granted to the land under Regulation 2/69 and 2/70, Section 3 of the Regulation 1/59 does not make the pattas issued inoperative or void and also that the authorities may be permitted to avail the opportunities provided under Regulation 2/69 and 2/70 and also that this does not preclude the authorities to avail their rights according to law. Under Section 4 of the Act 1 of 1917, the authority competent to grant permission for alienation of land by hill tribe is the Agent or any other prescribed officer. The

sale deed under which the petitioners purchased property on 30.10.1959 is therefore null and void and possession of the petitioners cannot be claimed as lawful. According to Section 3 (1)(a) of Regulation 1/59 transfer of immovable property situated in Agency tracts to a non-tribal is null and void, unless it is covered by prior permission from the Agent to Government, the Agency Divisional Officer, or any other prescribed Officer for acquisition of such land. Even under Section 4 of Act 1 of 1917, the competent authority to grant permission for alienation of land by hill tribe is the Agent or any other officer. The sale deed under which the petitioners purchased the property on 30-10-1959 is hit by Section 3 of the Regulation 1/59, and the transaction is treated as null and void. The possession of the petitioners cannot be claimed as lawful. Therefore, the order of the Collector is legal and justified in all aspects under Section 9 of the Regulation 2/69 and the powers of the Director of Settlements were delegated to the Collector vide notification issued in G.O.Ms.No.741, Revenue, dated 9.8.1980.

Heard the learned counsel for the petitioners and the learned Government pleader.

Learned counsel for the petitioners argued that the appeal has been taken on file by condoning the delay of 17 years and 3 months without following the due process of law and by virtue of the impugned order, the 1st respondent has chosen to set aside the pattas issued by the Settlement Officer, Rajahmundry on 30-06-1974 in favour of the petitioners. But condonation of abnormal delay is not supported by any reasonable cause. Learned counsel further argued that the authorities should have seen that since the pattas were granted in the year 1974, condoning of the delay should have been exercised within a reasonable time and the reasons adduced to condone the delay are also not in conformity with the decision of this Court in ***KOYYA VEERRAJU v. MANDAL REVENUE OFFICER, GOLLAPROLU, EAST GODAVARI DISTRICT***

In view of the uninterrupted possession of the petitioners over the lands in question and in view of the fact that the order in LTRP 354 of 1978 has become final and that since the transaction was not hit by Section 3(1)(a) of Regulation 1/59 as amended by Act 1 of 1970, the proceedings initiated by the Project

Officer, ITDA, are null and void. The undisputed fact remains that the order of the Special Deputy Collector in LTRP No. 354 of 1978 has become final on 2.6.1979 and the order passed in C.M.A.16 of 1989, dated 19.7.1990 has also become final. The observation of the first respondent that the sale deed under which the petitioners purchased the property is hit by Section 3 of Regulation 1 of 1959, goes to show that the first respondent has not taken into consideration the earlier orders passed by the different authorities, more so in LTRP 354 of 1978, dated 2.6.1979 and also the order in C.M.A.No.16 of 1989 dated 19.8.1990. In view of the decision cited supra and in view of the fact that the transaction is not hit by Section 3 of the A.P. Scheduled Areas Land Transfer Regulation 1 of 1959, the impugned order is set aside.

Accordingly, the writ petition is allowed as prayed for.

07.10.2004

MRKR

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Seventh Day of October, Two thousand and four.

Assistant Registrar.

To

1.The District Collector, East Godavari District, Kakinada.

2.The Special Agent to Government, Integrated Tribal Development, Rampachodavaram, East Godavari District.

3.Two C.Cs to the G.P. for revenue, High Court Buildings, Hyderabad.

4. Two C.D copies.